

OFFICE OF SPECIAL MASTERS

No. 04-1027V

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not to be published

DAVID and LAUREN MASON, as the legal
representatives of their minor daughter, Sage
Mason,

Petitioners,

v.

SECRETARY OF HEALTH AND HUMAN
SERVICES,

Respondent.

Denial Without Hearing

DECISION¹

On June 17, 2004, the petitioners filed a petition seeking compensation under the National Vaccine Injury Compensation Program (“the Program”) for injuries alleged to be related to a varicella vaccination received on August 10, 2001. Specifically, the petitioners alleged that their daughter, Sage Mason, contracted varicella and shingles as a result of the vaccination. However, at an unrecorded status conference held on October 21, 2004, counsel for the petitioners represented that proof of causation was dependent upon the results of tests that could only be performed upon samples of biologic material obtained during certain periodic outbreaks of her condition. With respondent’s consent, I stayed the case until such material could be obtained and tested.²

¹This document constitutes my final “decision” in this case, pursuant to 42 U.S.C. § 300aa-12(d)(3)(A). Unless a motion for review of this decision is filed within 30 days, the Clerk of this Court shall enter judgment in accord with this decision.

This document will not be sent to electronic publishers as a formally “published” opinion. However, because this document contains a reasoned explanation for my action in this case, I intend to post this document on the United States Court of Federal Claims’ website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002). Therefore, each party has 14 days within which to request redaction “of any information furnished by that party (1) that is trade secret or commercial or financial information and is privileged or confidential, or (2) that are medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of privacy.” Vaccine Rule 18(b). Otherwise, this entire document will be available to the public. *Id.* See also 42 U.S.C. § 300aa-12(d)(4)(B).

²See my orders of October 25, 2004, and August 11, 2005.

On September 28, 2006, the petitioners filed additional records, and a motion asking for a decision on the record, which states:

The PCR [polymerase chain reaction] testing has not provided the anticipated evidence linking Sage Mason's varicella vaccination to her varicella (chickenpox) or herpes zoster (shingles). * * * Therefore, under the circumstances, it now seems unlikely that the Petitioners will be able to establish that the varicella vaccination more likely than not caused Sage Mason's varicella and herpes zoster.

To receive compensation under the Program, the petitioners must prove either: 1) that Sage suffered a "Table Injury"--*i.e.*, an injury falling within the Vaccine Injury Table--corresponding to one of her vaccinations, or 2) that Sage suffered an injury that was actually caused by a vaccine. *See* 42 U.S.C. §§ 300aa-13(a)(1)(A) and 300aa-11(c)(1). My examination of the filed medical records, however, did not uncover any evidence that Sage suffered a "Table Injury." Further, the records do not contain a medical expert's opinion or any other evidence indicating that Sage's chickenpox or shingles were vaccine-caused.

Under the statute, a petitioner may not be given a Program award based solely on the petitioner's claims alone. Rather, the petition must be supported by either medical records or by the opinion of a competent physician. 42 U.S.C. § 300aa-13(a)(1).³ Here, because the medical records do not seem to support the petitioner's claim, a medical opinion must be offered in support. Petitioners, however, have offered no such opinion.

As the petitioners concede, the information on the record does not show entitlement to an award under the Program. Accordingly, I will now rule upon the record.

I am, of course, sympathetic to the fact that Sage has suffered from an unfortunate condition. However, under the law I can authorize compensation only if a medical condition or injury either falls within one of the "Table Injury" categories, or is shown by medical records or competent medical opinion to be vaccine-caused. No such proof exists in the record before me. Accordingly, it is clear from the record in this case that petitioners have failed to demonstrate either that Sage suffered a "Table Injury" or that her chickenpox or shingles were "actually caused" by a vaccination. Therefore, I have no choice but to hereby DENY this claim. In the absence of a timely-filed motion for review of this decision (see Appendix B to the Rules of the Court), the Clerk shall enter judgment in accord with this decision.

George L. Hastings, Jr.
Special Master

³The statutory provisions governing the National Vaccine Injury Compensation Program are found in 42 U.S.C. § 300-10 *et seq.* (2000 ed.).